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FIRST GENERAL COUNSEL'S REPORT

MUR: 6724
DATE COMPLAINT FILED: 2/21/13
DATE OF NOTIFICATION: 2/28/13
DATE OF LAST RESPONSE: 5/17/13
DATE ACTIVATED: 8/19/13

ELECTION CYCLE: 2012
EXPIRATION OF SOL: Earliest 7/15/2016
Latest 1/31/2017

COMPLAINANT:

Peter Waldron, National Field Coordinator,
Bachmann for President

RESPONDENTS:

Bachmann for President and Nancy H. Watkins in
her official capacity as treasurer

Many Individual Conservatives Helping Elect
Leaders Everywhere (MichelePAC) and Barry
Arrington in his official capacity as treasurer

C&M Strategies, Inc.

Guy Short

Kent Sorenson

National Fiscal Conservative PAC and Gerald
Weygandt in his official capacity as treasurer

**RELEVANT STATUTES
AND REGULATIONS:**

2 U.S.C. § 434(b)(2)(D)
2 U.S.C. § 434(b)(5)(A)
2 U.S.C. § 441a(a)
2 U.S.C. § 441a(a)(2)(A)
2 U.S.C. § 441a(a)(7)(B)(i)
2 U.S.C. § 441a(f)
2 U.S.C. § 441b
11 C.F.R. § 104.3(b)(4)(i)
11 C.F.R. § 104.9
11 C.F.R. § 109.21

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED:

P-MUR: 560

DATE RECEIVED: 6/28/13

DATE ACTIVATED: 8/19/13

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ELECTION CYCLE: 2012

EXPIRATION OF SOL: Earliest 7/15/2016

Latest 1/31/2017

SOURCE: Office of Congressional Ethics

RESPONDENTS: Bachmann for President and Nancy H. Watkins in
her official capacity as treasurer

Nancy H. Watkins in her individual capacity

**RELEVANT STATUTES
AND REGULATIONS:**

2 U.S.C. § 434(b)(2)(D)

2 U.S.C. § 434(b)(5)(A)

2 U.S.C. § 441a(a)

2 U.S.C. § 441a(a)(2)(A)

2 U.S.C. § 441a(a)(7)(B)(i)

2 U.S.C. § 441a(f)

2 U.S.C. § 441b

11 C.F.R. § 104.3(b)(4)(i)

11 C.F.R. § 104.9

11 C.F.R. § 109.21

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

This matter stems from a Complaint and referral from the Office of Congressional Ethics (“OCE Referral”) alleging that presidential candidate Michele Bachmann’s principal campaign committee, Bachmann for President and Nancy H. Watkins in her official capacity as treasurer (the “Committee”), and her leadership PAC, Many Individual Conservatives Helping Elect Leaders Everywhere PAC and Barry Arrington in his official capacity as treasurer (“MichelePAC”), among others, engaged in various transactions that violated the Federal Election Campaign Act of 1971, as amended (the “Act”).

Complainant Peter Waldron, who describes himself as the Committee’s former National Field Director, alleges that the Respondents violated the Act in several ways. The OCE Referral — which was received six weeks after the last Response to the Complaint — makes similar allegations and provides additional information relevant to the allegations set forth in the Complaint.² These sources allege that the Committee and MichelePAC (collectively “the Bachmann Committees”) disguised salary payments to an advisor, now-former Iowa State Senator Kent Sorenson, by routing them through C&M Strategies, Inc. (“C&M”), a one-man political consulting firm run by Guy Short, an officer of the Bachmann Committees. The use of an intermediary, according to the Complaint and OCE Referral, resulted in the Bachmann Committees failing to disclose properly their disbursements in reports they filed with the Commission.

² On September 11, 2013, the House Committee on Ethics announced that it had also received a referral from OCE regarding Bachmann and that it would extend its review of the matter, although it refrained from creating a special investigative committee. On the same date, it placed on its public website a number of relevant documents, including the Committee’s press release, the OCE report, and Bachmann’s response to the allegations. See Statement of the Chairman and Ranking Member of the Committee on Ethics Regarding Representative Michele Bachmann (Sept. 11, 2013), *available at* <http://ethics.house.gov/press-release/statement-chairman-and-ranking-member-committee-ethics-regarding-representative-6>.

1 Further, the Complaint and OCE Referral allege that MichelePAC made and the
2 Committee received excessive in-kind contributions when MichelePAC paid C&M's consulting
3 fees for work C&M in fact performed for the Committee. It is further alleged that National
4 Fiscal Conservative PAC and Gerald Weygandt in his official capacity as treasurer (collectively,
5 "NFC PAC"), a "SuperPAC" that supported Bachmann, made and the Committee received
6 excessive or prohibited in-kind contributions in the form of a coordinated communication.³

7 Respondents deny the allegations and, with respect to the allegations regarding Sorenson,
8 contend that the Bachmann Committees hired C&M as a consultant and that C&M subsequently
9 hired Sorenson as a subvendor in support of its work for the Committee.

10 As discussed below in greater detail, we recommend that the Commission find reason to
11 believe that each of the Bachmann Committees failed to properly disclose disbursements. We
12 also recommend that the Commission find reason to believe that MichelePAC made excessive
13 in-kind contributions to the Committee when it paid C&M's fees for work done for the
14 Committee, and reason to believe that the Committee knowingly accepted the excessive in-kind
15 contributions and failed to properly report them. We further recommend that the Commission
16 find no reason to believe that NFC PAC made, or that the Committee accepted, an excessive or
17 prohibited in-kind contribution as a result of alleged coordinated communications. We

³ The Complaint separately alleges that the Committee violated whistleblower statutes and engaged in extortion by withholding payment to individuals who failed to sign non-disclosure agreements. We make no recommendation as to these allegations, however, as the Commission lacks jurisdiction to enforce claimed legal obligations relating to whistleblower statutes, alleged extortion, or contract disputes. Similarly, the OCE Referral contains testimony on potential issues surrounding Bachmann's book tour, *see* OCE Referral, Mem. of Interview, Representative Michele Bachmann ¶¶ 66-85 (Apr. 24, 2013) ("Bachmann MOI"); OCE Referral, Mem. of Interview, Andy Parrish ¶¶ 49-54 (Mar. 28, 2013) ("Parrish MOI"); OCE Referral, Mem. of Interview, Eric Woolson ¶¶ 31-35 (Mar. 29, 2013) ("Woolson MOI"), but such testimony did not appear to be part of the official referral vote from the Board of the Office of Congressional Ethics, nor were any allegations relating to the book tour included in the Complaint. Therefore, we do not discuss those issues here.

1 recommend that the Commission find no reason to believe that Kent Sorenson violated the Act
2 by accepting payments through C&M from the Bachmann Committees, or that Guy Short
3 accepted an excessive in-kind contribution. Finally, we recommend that the Commission take no
4 action against C&M Strategies but that the Commission find no reason to believe that Nancy H.
5 Watkins violated the Act in her individual capacity.

6 II. FACTUAL AND LEGAL ANALYSIS

7 A. Facts

8 Bachmann for President was Representative Michele Bachmann's principal campaign
9 committee during her 2012 presidential campaign.⁵ MichelePAC is Bachmann's leadership
10 PAC.⁶ Short is the sole principal of C&M, a political consulting firm that was retained by each
11 of the Bachmann Committees during Bachmann's 2012 presidential campaign.⁷ Through these
12 arrangements, Short acted as the Committee's National Political Director and MichelePAC's
13 Executive Director.⁸ Kent Sorenson was an Iowa state senator and the Committee's Iowa State
14 Chairman from shortly after its establishment in June 2011 through November 2011.⁹ He is the

⁵ Bachmann for President Statement of Organization at 2 (June 8, 2011).

⁶ MichelePAC Resp. at 1.

⁷ Short Resp. at 1.

⁸ Compl. at 1.

⁹ OCE Referral ¶ 1.

1 sole principal of Grassroots Strategy, Inc. ("Grassroots"), a political consulting firm that was
2 hired to support each of the Bachmann Committees during the 2012 election cycle.¹⁰

3 In "early 2011" Andy Parrish, Bachmann's former Chief of Staff, personally recruited
4 Sorenson to support Bachmann's presidential campaign.¹¹ On March 11, 2011, Sorenson
5 became the first elected official in Iowa to endorse Bachmann's candidacy.¹² Sorenson then
6 began "providing strategic advice about the Iowa political landscape, recommending staff
7 members to the campaign, recruiting other Iowa legislators to the Bachmann cause, and making
8 communications on the campaign's behalf."¹³ According to Parrish, it became clear that
9 "Sorenson would require payment in exchange for his work on the Bachmann campaign."¹⁴
10 Sorenson and Parrish allegedly believed that Iowa Senate Code of Ethics prohibited Sorenson
11 from accepting payment from the Committee or MichelePAC.¹⁵ Over the course of March and

¹⁰ *Id.* ¶ 35; MichelePAC Resp. at 2; Short Resp. at 1-2. According to its public filings with the Iowa Secretary of State, Sorenson incorporated Grassroots as a domestic profit corporation in 2010, listing himself as its incorporator/director. Grassroots reports no other directors or officers. See IOWA SEC'Y OF STATE, [http://sos.iowa.gov/search/business/\(S\(xniyv445jwletg455vubni45\)\)/officers.aspx](http://sos.iowa.gov/search/business/(S(xniyv445jwletg455vubni45))/officers.aspx) (last visited Apr. 2, 2014).

¹¹ OCE Referral ¶ 5.

¹² Report to the Senate Ethics Committee on the Investigation of State Senator Kent Sorenson, 39 (Oct. 2, 2013), available at http://archive.desmoinesregister.com/assets/pdf/Sorenson_investigation_part1.pdf (Volume I) and http://archive.desmoinesregister.com/assets/pdf/Sorenson_investigation_part2.pdf (Volume II) ("Independent Investigator's Report").

¹³ *Id.* at 39-40.

¹⁴ *Id.* at 40; see OCE Referral ¶ 6.

¹⁵ OCE Referral ¶ 7. Most of the documents in the OCE Referral assume that Sorenson, as a sitting state senator, was prohibited by state law from being paid by the Committee. The Committee notes in its Response, however, that Iowa state law appears to exempt federal campaigns from the restriction placed on state officeholders, including members of the Iowa senate. See Committee Resp. at 7. In any event, the Iowa Supreme Court appointed an independent investigator who found probable cause to believe that Sorenson violated the Iowa Senate Code of Ethics by accepting compensation from MichelePAC (and possibly violated the Code by accepting compensation from the Committee) for his work on the Bachmann campaign. See Independent Investigator's Report at 4-5. Sorenson resigned after the release of the independent investigator's report. See Jason Noble, *Kent Sorenson Resigns After Report Finds He Received Money from Bachmann Campaign*, DES MOINES REGISTER, October 2,

1 April 2011, Sorenson, Parrish, and Short negotiated the terms of the arrangement, ultimately
2 agreeing that the Committee would pay an additional \$7,500 per month to C&M under the
3 existing \$15,000 per month contract (for a total of \$22,500 per month), and C&M would then
4 pass the additional amount to Sorenson through Grassroots.¹⁶ The OCE Referral notes that
5 "OCE has received no information" that Sorenson took direction from Short or performed any
6 work for C&M, and that "it does not appear that C&M exercised any independent control over
7 the funds it received" from the Committee that were "earmarked" for Sorenson.¹⁷ Accordingly,
8 the OCE Referral concludes that the Committee paid Sorenson \$7,500 per month but "routed"
9 the payments through C&M to avoid disclosing that Sorenson was the intended recipient.¹⁸

10 Although the Committee was not yet established, Short and Sorenson were already
11 working on behalf of Bachmann's candidacy. During May, MichelePAC paid \$24,000 to
12 C&M.¹⁹ Grassroots received its first payment from C&M on May 16 in the amount of \$8,275.²⁰
13 After the Committee officially formed in June, it entered into the previously arranged contract
14 with C&M, which ran from June 13 to December 31.²¹ Pursuant to that contract, the Committee
15 made the following payments to C&M: \$33,750 on July 29 (presumably covering half of June

2013, available at <http://blogs.desmoinesregister.com/dmr/index.php/2013/10/02/senate-investigator-kent-sorenson-received-payment-from-bachmann-campaign-his-denials-may-constitute-a-felony/article>.

¹⁶ OCE Referral ¶¶ 6-19. C&M would pass along a total of \$59,915 — \$7,489 per month for eight months — to Sorenson/Grassroots over the course of 2011. Independent Investigator's Report at 48-49.

¹⁷ OCE Referral ¶¶ 26, 28.

¹⁸ *Id.*

¹⁹ See Independent Investigator's Report at 47-49.

²⁰ *Id.* at 48.

²¹ Committee Resp., Attach. B; OCE Referral ¶ 15, Ex. 9; see Committee Resp., Attach. C (showing invoices from C&M to the Committee at a monthly rate of \$22,500).

1 and all of July at a monthly rate of \$22,500); \$25,830 on September 12 (covering August
2 services); \$22,500 on October 11 (covering September services); and \$22,500 on November 9
3 (covering October services).²² The record shows no payments made from the Committee to
4 C&M for services performed during November and December 2011, despite the fact that various
5 witness accounts provided with the OCE Referral state that Short worked on a full-time basis for
6 the Committee in late 2011 and early 2012.²³ This time period is approximately when the
7 Committee began running short of funds.²⁴

8 As the Committee ceased its payments to C&M, MichelePAC's payments to C&M saw a
9 corresponding increase. MichelePAC — which had been paying \$5,000 per month to C&M
10 since the Committee's establishment in mid-June — then paid \$20,000 on December 6, 2011,
11 and \$20,000 on January 3, 2012, for "fundraising consulting."²⁵ Combined with a \$5,000
12 payment from MichelePAC to C&M on November 30,²⁶ MichelePAC appears to have paid a
13 total of \$45,000 to C&M for services rendered in November and December, the same amount.

²² See 2011 October Quarterly Report; 2011 Year End Report.

²³ See, e.g., Parrish MOI ¶¶ 37-40; OCE Referral, Mem. of Interview, Robert Heckman ¶¶ 22-23 (Mar. 26, 2013) ("Heckman MOI"); Woolson MOI ¶¶ 10, 14, 16. We are not aware of any information about any discussion or agreement between C&M and the Committee to amend the contract to relieve the Committee from its obligation to pay C&M its monthly consulting fee through December 31, 2011. The Committee also did not disclose any debts or obligations to C&M on its 2011 Year End Report covering the last quarter of the year (and just a \$1,532.70 debt to Short during that time, which it listed as "mileage" when it reimbursed him on January 4, 2013).

²⁴ See Bachmann MOI ¶ 40; Parrish MOI ¶ 41; Woolson MOI ¶¶ 17-18.

²⁵ See Committee Resp., Attach. F, BFP_FEC-000163-164.

²⁶ *Id.* at BFP_FEC-000162.

1 that the Committee owed to C&M and Grassroots (\$22,500 per month) for their work over that
2 period.²⁷

3 In addition to the allegations surrounding payments to C&M and Grassroots, the
4 Complaint further alleges that the Committee coordinated media buys and placement with NFC
5 PAC, a "hybrid PAC" registered with the Commission.²⁸ The allegations are based on a
6 discussion that Complainant represents he personally witnessed in late 2011 between Committee
7 "Senior Advisor and Speech Coach Brett O'Donnell" and NFC PAC president Bill Hemrick.²⁹
8 NFC PAC's disclosure reports reveal disbursements totaling \$13,950 to "Clear Channel"³⁰
9 between January 3 and 6, 2012.³¹

10 In response to its alleged failure to accurately disclose its disbursements, the Committee
11 states that it properly reported all payments to C&M, its "primary vendor," and that the Act and
12 Commission regulations do not require a campaign committee to "list sub-vendors that C&M
13 Strategies ultimately may have hired to fulfill its responsibilities" or disclose payments made by
14 its vendors to subcontractors in connection with the vendors' services provided to the

²⁷ Sorenson shifted his support to Ron Paul on December 28, 2011. Rachel Weiner, *Kent Sorenson, Bachmann's Iowa chair, defects to Paul*, WASHINGTON POST, Dec. 28, 2011, available at http://www.washingtonpost.com/blogs/the-fix/post/kent-sorenson-bachmanns-iowa-chair-defects-to-paul/2011/12/28/gIQAISDPNP_blog.html.

²⁸ Compl. at 3.

²⁹ *Id.*

³⁰ Although NFC PAC did not list a "Purpose of Disbursement," these are the only disbursements in late 2011 or early 2012 that are clearly associated with a media vendor. Because the disbursements at issue appear to have been made from NFC PAC's non-contribution account (which was permitted to accept funds in unlimited amounts from individuals, corporations, labor organizations, and/or other political committees), any in-kind contributions resulting from coordination may constitute violations of 2 U.S.C. §§ 441a and 441b. Our review revealed that NFC PAC's non-contribution account received \$17,000 from one individual in 2011 but no funds from corporations or labor unions; accordingly, only section 441a may be implicated by this allegation.

³¹ 2012 April Quarterly Report, 10-13. It is unclear, however, whether the resulting communications were actually distributed in advance of the January 3, 2012, Iowa Caucus.

1 campaign.³² Like the Committee, MichelePAC asserts that it made no effort to conceal
2 payments to Sorenson, and that the Act does not require reporting of payments made to
3 subvendors.³³ Short and C&M similarly assert that there was no effort to conceal payments to
4 Sorenson, and that the "arrangement was indistinguishable from thousands of other
5 contractor/subcontractor or vendor/subvendor arrangements involving services provided to
6 political committees."³⁴ Sorenson did not file a response in this matter. He did, however, submit
7 a response to the Iowa State Senate Ethics Committee, provided to the Commission as part of the
8 OCE Referral, wherein he maintains that he "was never paid directly or indirectly" by either of
9 the Bachmann Committees.³⁵

10 In response to the allegation that MichelePAC assumed the Committee's payment
11 obligations, the respondents point to C&M's invoices to MichelePAC during this period
12 describing the services (fundraising and management consulting, a fundraising project, and a
13 research project), and contend that these invoices indicate that MichelePAC's payments were
14 legitimate compensation for *bona fide* services.³⁶ Neither Short nor MichelePAC, however,
15 provides any details about the existence of any such project in fact, including who requested
16 work, when it was performed or completed, and how the cost was determined, despite the fact

³² Committee Resp. at 4-5.

³³ MichelePAC Resp. at 2.

³⁴ Short Resp. at 2.

³⁵ OCE Referral ¶ 32, Ex. 16.

³⁶ Committee Resp. at 8-9; MichelePAC Resp. at 2.

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1 that Short would have had the authority to approve any such fundraising project for MichelePAC
2 in December 2011.³⁷

3 Finally, the Committee contends that the "content" standard of the coordination test is not
4 satisfied because the Complaint does not allege that any advertisements were sponsored by NFC
5 PAC after the alleged conversation between the campaign advisor and Hemrick occurred in late
6 2011.³⁸ Although NFC PAC's treasurer asserts that he knows nothing about the alleged
7 discussion, he states that Hemrick instructed him to pay for radio advertising time that Hemrick
8 had arranged on Iowa stations prior to the January 3, 2012, Iowa caucuses.³⁹

9 **B. Analysis**

10 1. There is Reason to Believe the Committee Violated Section 434(b)(5)

11 The Act and Commission regulations require political committees to report the name and
12 address of each person to whom they make expenditures or other disbursements aggregating
13 more than \$200 per calendar year, or per election cycle for authorized committees, as well as the
14 date, amount, and purpose of such payments.⁴⁰ These reporting requirements are intended to

³⁷ Bachmann MOI ¶ 46; Parrish MOI ¶¶ 28, 33-34. Short established MichelePAC at Bachmann's direction and was "in charge" of MichelePAC during all relevant times. Bachmann MOI ¶¶ 4-5; Parrish MOI ¶¶ 26-27. According to Bachmann, Short was responsible for approving non-contribution disbursements made by MichelePAC as well as the hiring and firing of employees or consultants. Bachmann MOI ¶¶ 7-8. Short was also responsible for setting up his own consulting agreement, negotiating his own compensation arrangements, supervising his own work, and reviewing and approving the payment of invoices, including invoices from or payments to his own firm, C&M. *Id.* ¶¶ 9-13, 36; Parrish MOI ¶¶ 29, 33-34.

³⁸ Committee Resp. at 9-11.

³⁹ NFC PAC Resp. at 1.

⁴⁰ 2 U.S.C. § 434(b)(5), (6); 11 C.F.R. § 104.3(b)(4)(i), (vi) (authorized committees); *id.* § 104.9(a), (b) (political committees).

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1 ensure public disclosure of “where political campaign money comes from and how it is spent.”⁴¹
2 Neither the Act nor the Commission’s relevant implementing regulations address the concepts of
3 ultimate payees, vendors, agents, contractors, or subcontractors in this context.⁴² The
4 Commission has determined, however, that merely reporting the immediate recipient of a
5 committee’s payment will not satisfy the requirements of section 434(b)(5) when the facts
6 indicate that the immediate recipient is merely a conduit for the intended recipient of the funds.

7 For instance, in MUR 4872 (Jenkins), a committee hired a vendor — Impact Mail — to
8 perform phone bank services on the committee’s behalf. When the committee discovered that
9 David Duke’s name and phone number appeared on caller identification for calls placed by
10 Impact Mail’s phone bank, the committee wanted to prevent any association with Duke and
11 sought to terminate its relationship with Impact Mail.⁴³ When this proved difficult, the
12 committee took measures to conceal its relationship with Impact Mail by routing its payments to
13 Impact Mail through a second, unrelated vendor, Courtney Communications, and reporting
14 Courtney Communications as the payee on disclosure reports.⁴⁴ Although Courtney
15 Communications was a vendor that provided media services for the committee during the period
16 in question, Impact Mail was not a subvendor of Courtney Communications because Courtney

⁴¹ *Buckley v. Valeo*, 424 U.S. 1, 66 (1976); see also *Citizens United v. FEC*, 558 U.S. 310, 369-71 (2010) (describing importance of disclosure requirements to serve informational interest, because “transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages”).

⁴² Advisory Op. 1983-25 (Mondale for President) at 2. The Commission has since addressed the requirements of section 434(b)(5) in certain situations not applicable to these facts. See Reporting Ultimate Payees of Political Committee Disbursements, 78 Fed. Reg. 40,625, 46,026 (July 8, 2013) (clarifying committee’s obligations to report “ultimate payees” in three specific scenarios not articulated in the Act or regulations: reimbursements to individuals who advance personal funds to pay committee expenses; payments to credit card companies; and reimbursements to candidates who use personal funds to pay committee expenses).

⁴³ Conciliation Agreement at 2-3, MUR 4872 (Jenkins).

⁴⁴ *Id.* at 3-4.

1 Communications "had no involvement whatsoever with the services provided by Impact Mail."⁴⁵
2 Its only role was "to serve as a conduit for payment to Impact Mail so as to conceal the
3 transaction with Impact Mail."⁴⁶

4 Likewise, in MUR 3847 (Stockman), the Commission found probable cause to believe
5 that Friends of Steve Stockman violated section 434(b)(5) by paying at least one vendor through
6 a conduit, Political Won Stop ("PWS"), an unincorporated proprietorship run by two officials of
7 Friends of Steve Stockman.⁴⁷ The Commission rested its determination on the facts that PWS's
8 principals held positions with the campaign; PWS was not incorporated; there was no formal
9 contract between PWS and the campaign; PWS was devoted largely to the Stockman campaign,
10 worked out of that campaign's headquarters, and used its facilities; and the principals of PWS
11 held themselves out to the public as officials of the Stockman campaign.⁴⁸ The Commission
12 concluded that these facts reflected that PWS served merely as an intermediary, and thus, under
13 section 434(b)(5), the committee was required to report the true purpose and recipients of the
14 payments made through PWS.⁴⁹

⁴⁵ *Id.*

⁴⁶ *Id.* at 4. Even though a committee may satisfy recordkeeping requirements by retaining a payee's "invoices and the Committee's canceled checks issued in payment," *see* AO 1983-25 at 2-3, a committee does not satisfy its disclosure obligations under section 434(b)(5) by merely relying on those documents when the committee has previously instructed the payee to pass payments along to a third party that was not involved in the provision of services by the payee. Conciliation Agreement at 3, MUR 4872 (Jenkins).

⁴⁷ *See* General Counsel's Brief at 33-37, MUR 3847 (Stockman).

⁴⁸ Conciliation Agreement at 6-7, MUR 3847 (Stockman).

⁴⁹ General Counsel's Brief at 37, MUR 3847 (Stockman); Conciliation Agreement at 7, MUR 3847 (Stockman).

1 As in MURs 4872 (Jenkins) and 3847 (Stockman), here the Committee used C&M
2 merely "to serve as a conduit for payment"⁵⁰ — thereby concealing the true, intended recipient of
3 the disbursements. The Committee made the decision to hire Sorenson and negotiated the terms
4 of his compensation,⁵¹ and only out of a desire to conceal payments to Sorenson did it ultimately
5 agree to route the money through C&M.⁵² Sorenson took no direction from Short nor performed
6 any work for C&M, and "it does not appear that C&M exercised any independent control over
7 the funds it received" from the Committee that were "earmarked" for Sorenson.⁵³ Further, as in
8 MUR 3847 (Stockman), C&M's only principal (Short) held an official position with the
9 Committee and appears to have worked out of campaign headquarters, used its facilities, and
10 devoted himself largely to the Bachmann campaign, casting doubt on the arm's length nature of
11 the relationship. Given the weight of the evidence, we agree with OCE's conclusion that the
12 Committee routed payments through C&M to avoid disclosing that Sorensen was the intended
13 recipient.⁵⁴

14 In its Response, the Committee argues that the Commission's resolution on the facts
15 submitted in Advisory Opinion 1983-25 (Mondale for President) should apply here, but that
16 reliance is misplaced. In AO 1983-25 the Commission determined that in certain circumstances
17 an authorized committee is not required to report separately payments the committee's vendors
18 make to other persons, such as payments for services or goods used in the performance of the

⁵⁰ Conciliation Agreement at 4, MUR 4872 (Jenkins).

⁵¹ OCE Referral ¶¶ 6-13.

⁵² *Id.* ¶¶ 8-19.

⁵³ *Id.* ¶¶ 26, 28.

⁵⁴ *Id.* ¶ 28.

1 vendor's contract with the committee.⁵⁵ In reaching its conclusion, the Commission found
2 several facts stated in the request to be significant: (1) the consulting group had a legal existence
3 as a corporation separate from the operations of the committee; (2) the group's principals did not
4 hold any staff position with the committee; (3) the committee conducted arm's length
5 negotiations with the group that resulted in formation of a final contract; (4) the group was not
6 required to devote its "full efforts" to the contract and expected to have contracts with other
7 campaigns and entities; and (5) the committee had no interest in the other contracts.⁵⁶

8 The facts presented in this matter, however, are materially distinguishable from those
9 submitted in AO 1983-25.⁵⁷ First, C&M does not meet the description of a legitimate "vendor"
10 as set forth in AO 1983-25. Although C&M is a separate legal entity, its principal (Short) held a
11 staff position with the Committee. This relationship — which is itself material under AO 1983-
12 25 — further calls into question whether the contract was negotiated at arm's length.⁵⁸
13 Moreover, it appears that C&M devoted its "full efforts" solely to the Committee, at least during
14 the final months preceding the Iowa Caucus,⁵⁹ and unlike the consulting group in AO 1983-25,
15 C&M's only other known client was the leadership PAC of the very candidate that the

⁵⁵ Advisory Op. 1983-25 (Mondale for President); *see* Factual and Legal Analysis at 12, MUR 6510 (Kirk for Senate *et al.*) (media consultant was a vendor where it did not hold a position with the committee, nor did it work exclusively for committee at any time, and where it hired multiple subvendors to aid in the performance of its contract).

⁵⁶ Advisory Op. 1983-25 (Mondale for President) at 3.

⁵⁷ *See* 2 U.S.C. § 437f(c) (persons engaging in transactions or activity that is indistinguishable in all its material aspects from the transaction or activity approved in an advisory opinion and who act in good faith in accordance with the provisions and findings of the advisory opinion cannot be sanctioned for violating the Act as a result of their actions).

⁵⁸ *See* General Counsel's Report at 6-8, MUR 3847 (Stockman) (Feb. 3, 1997); Conciliation Agreement at 6-7, MUR 3847 (Stockman).

⁵⁹ *See supra* note 23.

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1 Committee — which Short served as Executive Director — supported.⁶⁰ Further, the facts
2 suggesting that MichelePAC (at Short's direction) paid part of the Committee's obligations
3 under its contract with C&M indicate that the Committee had an interest in C&M's contract with
4 MichelePAC.⁶¹ It should also be noted that, unlike the present case, there was no indication that
5 the requester in AO 1983-25 had a motive to conceal the true recipient of its payments; rather,
6 the request appeared to have been made in pursuit of administrative convenience.

7 Second, even assuming that C&M was a "vendor" under AO 1983-25, there is no
8 evidence that Sorenson's services as Iowa State Chair were "used in the performance of" C&M's
9 contract with the Committee.⁶² Rather, the facts presented in the OCE Referral suggest that the
10 Committee agreed to Sorenson's request to be compensated for his service as its Iowa State
11 Chair and would have paid Sorenson directly were it not for his concerns that Iowa Senate ethics
12 rules prevented him from being paid by the Committee for his work.⁶³ The facts also suggest
13 that Sorenson took no direction from Short and performed no work for C&M — indeed,
14 Sorenson denies being employed by C&M.⁶⁴

15 As set forth above, it appears that the Committee used C&M merely to serve as a conduit
16 for payment — thereby failing to report the true, intended recipient of the disbursements.

⁶⁰ C&M's contract with MichelePAC also included a sub-contract with Sorenson. MichelePAC Resp. at 2.

⁶¹ See *supra* at 8.

⁶² Advisory Op. 1983-25 (Mondale for President) at 2; Factual and Legal Analysis at 12, MUR 6510 (Kirk for Senate *et al.*).

⁶³ OCE Referral ¶¶ 6-17.

⁶⁴ *Id.* ¶¶ 26-28, 31.

1 Accordingly, we recommend that the Commission find reason to believe that the Committee
2 violated 2 U.S.C. § 434(b)(5).⁶⁵

3 2. There is Reason to Believe MichelePAC Violated Section 434(b)(5)

4 Although the OCE Referral does not address the relationship between MichelePAC,
5 C&M, and Sorenson to the same degree as that involving the Committee, C&M, and Sorenson,
6 the Responses appear to indicate that the two sets of relationships were not materially different
7 — that is, MichelePAC paid C&M, C&M passed along a certain amount that was designated for
8 Sorenson, and Sorenson did not take any direction from or perform any work for C&M.⁶⁶
9 Accordingly, we further recommend that the Commission find reason to believe that
10 MichelePAC violated 2 U.S.C. § 434(b)(5).

11 3. There is No Reason to Believe Sorenson Violated Section 434(b)(5)

12
13 Sorenson's involvement under these facts ends with his receiving payments from the
14 Committee and MichelePAC that were improperly reported to the Commission. Merely
15 receiving those payments, however, does not impress upon the recipient an obligation to report
16 the committees' expenditures. Accordingly, we recommend that the Commission find no reason
17 to believe that Sorenson violated 2 U.S.C. § 434(b)(5).

⁶⁵ Watkins was also notified that she may have violated 2 U.S.C. § 434(b)(5) in her individual capacity. The Commission will consider a treasurer of a political committee subject to enforcement action in her individual capacity when the information indicates that the treasurer: (a) knowingly and willfully violated the Act or regulations; (b) recklessly failed to fulfill the duties imposed by a provision of the Act or regulations that applies specifically to treasurers, or (c) intentionally deprived herself of the operative facts giving rise to a violation. Statement of Policy Regarding Treasurers Subject to Enforcement Proceedings, 70 Fed. Reg. 3, 6 (Jan. 3, 2005). There is no information in the Complaint or OCE Referral upon which to conclude that Watkins acted in a manner required to support an enforcement action against her in her individual capacity. Therefore, we recommend that the Commission find no reason to believe Nancy H. Watkins violated 2 U.S.C. § 434(b)(5) in her individual capacity.

⁶⁶ OCE Referral ¶¶ 26-28, 31; Short Resp. at 2.

4. There is Reason to Believe MichelePAC and the Committee Violated Section 441a

The Act provides that no multicandidate political committee shall make contributions to any candidate and his or her authorized political committee, which, in the aggregate, exceed \$5,000 per calendar year,⁶⁷ and no candidate or political committee shall knowingly accept contributions in violation of the limitations and prohibitions of the Act.⁶⁸ "Contribution" under the Act and Commission regulations includes the payment by any person of compensation for the personal services of another person rendered to a political committee without charge for any purpose.⁶⁹

Despite the substantial evidence that Short and his company, C&M, worked full time for the Committee during November and December 2011 in anticipation of the Iowa Caucus,⁷⁰ the Committee did not report paying any of the \$22,500 monthly consulting fees to C&M or Sorenson/Grassroots as required by their consulting agreement.⁷¹ Instead, MichelePAC (for which Short served as Executive Director) paid C&M \$5,000 on November 30, \$20,000 on December 6, and \$20,000 on January 3, for a total of \$45,000 — the same amount the Committee owed to C&M and Sorenson/Grassroots for two months of consulting services. Moreover, because Short worked full time for the Committee during November and December, it is unlikely that he would have had time to perform for MichelePAC a significant enough

⁶⁷ 2 U.S.C. § 441a(a)(2)(A).

⁶⁸ *Id.* § 441a(f).

⁶⁹ *Id.* § 431(8)(A)(ii); 11 C.F.R. §§ 100.52(d), 100.54.

⁷⁰ *See supra* note 23.

⁷¹ *See* Committee Resp., Attach. C.

1 “fundraising and research project . . . unrelated to his work”⁷² on the campaign to justify the
2 \$22,500 per month payments from MichelePAC. In fact, Bachmann stated that she did not recall
3 any such fundraising project or approving any fundraising letters for MichelePAC during this
4 period.⁷³ Moreover, she stated that when she asked her campaign finance chairman, James
5 Pollack, to review the payments from MichelePAC to C&M, Pollack told her it was “odd that
6 while Mr. Short had been getting monthly retainer payments from MichelePAC, there was a
7 lump sum payment to Mr. Short in December 2011.”⁷⁴ He further suggested that Short had
8 “‘pushed’ his retainer payments ‘together,’ either taking deferred compensation all at once or
9 pre-paying himself for future work.”⁷⁵

10 Based on the available information, it appears that MichelePAC paid the Committee’s
11 obligations to C&M in late 2011 and early 2012, thereby making in-kind contributions to the
12 Committee. Accordingly, we recommend that the Commission find reason to believe
13 MichelePAC violated 2 U.S.C. § 441a(a)(2)(A) by making excessive in-kind contributions to the
14 Committee and that the Committee violated 2 U.S.C. § 441a(f) by knowingly accepting those
15 excessive in-kind contributions and 2 U.S.C. § 434(b)(2)(D) by failing to report them.⁷⁶

⁷² Short Resp. at 2.

⁷³ Bachmann MOI ¶¶ 44-45.

⁷⁴ *Id.* ¶ 50.

⁷⁵ *Id.* ¶¶ 49-54. There was apparently little or no oversight of Short’s work for MichelePAC or his billing practices. Bachmann appears to have given him full authority to authorize payments to himself through C&M. *See, e.g., id.* ¶¶ 5-13, 32-38.

⁷⁶ *See* Factual and Legal Analysis (Peace Through Strength PAC) at 5, MUR 5908 (Hunter) (Feb. 19, 2009) (finding reason to believe that presidential candidate Duncan Hunter’s leadership PAC paid for travel expenses properly attributable to Hunter’s presidential campaign). The Commission premised its reason-to-believe determination in that matter primarily on the fact that neither Hunter nor his principal campaign committee reported any contributions received or expenditures made during a period in which Hunter had been traveling the country and promoting his campaign, yet his leadership PAC had disclosed disbursements for travel expenses around the same

1 5. There is No Reason to Believe Short Violated Section 441a

2 Short served as the National Political Director of the Committee, the entity that accepted
3 the alleged excessive in-kind contribution. Under the Act, “[n]o officer or employee of a
4 political committee shall knowingly accept a contribution made for the benefit or use of a
5 candidate, or knowingly make any expenditure on behalf of a candidate, in violation of any
6 limitation imposed on contributions and expenditures under this section.”⁷⁷ To our knowledge,
7 the Commission has never imposed section 441a(f) liability on an “officer or employee” of a
8 committee unless the “officer or employee” was the candidate who was benefiting from the
9 contributions.⁷⁸

time. *Id.* at 4-5. The subsequent investigation, however, did not contradict the respondents' assertion that the travel expenses advanced the leadership PAC's core mission, and the Commission ultimately dismissed the matter, noting that even if the two committees had benefitted equally from the travel disbursements, the potentially excessive contributions would have been only approximately \$100 ($\$10,200/2 = \$5,100$, minus the maximum allowable contribution of \$5,000). Statement of Reasons of Chairman Petersen and Commissioners Hunter, McGahn, Walther, and Weintraub at 3, MUR 5908 (Aug. 23, 2010). Unlike that matter, however, the amount at issue is not *de minimis* in the present case.

⁷⁷ 2 U.S.C. § 441a(f). See Statement of Policy Regarding Treasurers Subject to Enforcement Proceedings, 70 Fed. Reg. 1, n.8 (section 441a(f) “specifically impose[s] obligations on committees and committee officers and candidates”).

⁷⁸ See, e.g., Certification, MUR 5908 (Peace Through Strength PAC) (Jan. 30, 2009) (finding RTB that presidential candidate Duncan Hunter violated section 441a(f) by accepting excessive contributions during “testing the waters” period and prior to filing Statement of Candidacy); Factual and Legal Analysis at 8, MUR 5783 (Green Party of Luzerne County, PA and Carl Romanelli for U.S. Senate) (June 18, 2007) (candidate Romanelli violated section 441a(f) “because the candidate appears to have solicited and accepted contributions to [a county party committee] that were used for ballot qualification efforts on his behalf”); Certification, MUR 5685 (Joe Turnham for Congress) (Nov. 4, 2005) (finding RTB that candidate violated section 441a(f) by receiving excessive contributions on behalf of his committee); see also 2 U.S.C. 432(e)(2) (candidate considered agent of the authorized committee of such candidate for purposes of receiving contributions and or loans and making disbursements in connection with campaign).

1 Accordingly, we recommend that the Commission find no reason to believe Short⁷⁹
2 violated 2 U.S.C. 441a(f) by knowingly accepting an excessive in-kind contribution made for the
3 benefit or use of a candidate.

4 6. There is No Reason to Believe the Committee and NFC PAC Made a
5 Coordinated Communication.
6

7 An expenditure made by any person "in cooperation, consultation, or concert, with, or at
8 the request or suggestion of, a candidate, his authorized political committees or their agents"
9 constitutes an in-kind contribution.⁸⁰ A communication is coordinated with a candidate, an
10 authorized committee, a political party committee, or an agent of any of the foregoing when the
11 communication is (1) paid for, in whole or part by a person other than that candidate, authorized
12 committee, or political party committee; (2) satisfies at least one of the content standards
13 described in 11 C.F.R. § 109.21(c); and (3) satisfies at least one of the conduct standards
14 described in 11 C.F.R. § 109.21(d).⁸¹

15 The first prong of the coordinated communication test is satisfied because NFC PAC is a
16 third-party payor.⁸² In order to satisfy the second standard (the "content" standard) a
17 communication must be: (1) an electioneering communication; (2) a public communication that
18 disseminates, distributes, or republishes a candidate's campaign materials; (3) a public
19 communication that contains express advocacy; (4) a public communication that contains a

⁷⁹ Although the Complaint identifies Short's firm, C&M, as a respondent, it does not describe a violation of the Act by C&M.

⁸⁰ 2 U.S.C. § 441a(a)(7)(B)(i).

⁸¹ 11 C.F.R. § 109.21(a)(1)-(3).

⁸² See *id.* § 109.21(a)(1).

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1 reference to a candidate or political party within designated time periods before elections; or
2 (5) a public communication that contains the functional equivalent of express advocacy.⁸³

3 In this case, we have no substantive information as to the content of any communications.
4 We are aware of no prior matter in which the Commission has found reason to believe that a
5 communication was coordinated — and thus an in-kind contribution — without any information
6 concerning the possible content of the communication. To the contrary, the Commission
7 previously has relied on the lack of such information in finding no reason to believe a violation
8 occurred. For instance, in MUR 6164 (Mike Sodrel, *et al.*), the complaint alleged that a group
9 coordinated billboards with a candidate's committee. Even though the group's website referred
10 generally to "billboards" it had paid for and its reports to the IRS noted that it made two separate
11 payments for \$5,915 and \$2,630 to a media consultant for "billboards," the Commission
12 determined that the allegations were "not sufficient to warrant an investigation into whether the
13 conduct and content standards" had been met because "there is no available information
14 concerning the content of" the billboards.⁸⁴ In the same matter, the Commission determined that
15 it was unable to analyze allegedly coordinated radio ads because the complaint did not include
16 any radio ad transcripts or dates of broadcast.⁸⁵ Similarly, in this case the available information
17 does not indicate that NFC PAC paid for a communication that satisfied the content standard of
18 the coordinated communications analysis.

⁸³ *Id.* § 109.21(c)(1)-(5).

⁸⁴ Factual and Legal Analysis at 5-6, MUR 6164 (Mike Sodrel, *et al.*) (Oct. 9, 2009); *see* Factual and Legal Analysis at 3, MUR 5845 (Citizens for Truth) (June 27, 2007) (concluding that, although the complaint alleged that "billboards and other paid media" purchased by the group were critical of a candidate, because the complaint "does not provide any information regarding the message or text of the billboard" the alleged communications did not satisfy the content standard).

⁸⁵ Factual and Legal Analysis at 6-7, MUR 6164 (Mike Sodrel, *et al.*).

1 . Because the content requirement was not satisfied, there was no coordinated
2 communication under 11 C.F.R. § 109.21, and thus no in-kind contribution by NFC PAC to the
3 Committee. Accordingly, we recommend that the Commission find no reason to believe that
4 NFC PAC and Gerald Weygandt in his capacity as treasurer violated 2 U.S.C. §§ 441a or 441b.
5 We further recommend that the Commission find no reason to believe that the Committee
6 violated 2 U.S.C. §§ 441a(f) or 441b by receiving an excessive or prohibited in-kind contribution
7 from National Fiscal Conservative PAC in the form of a coordinated communication.

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IV. RECOMMENDATIONS

1. Open a MUR in Pre-MUR 560.
2. Merge the new MUR into MUR 6724.
3. Find reason to believe Bachmann for President and Nancy H. Watkins in her official capacity as treasurer violated 2 U.S.C. § 434(b)(5).
4. Find no reason to believe Nancy H. Watkins in her individual capacity violated 2 U.S.C. § 434(b)(5).
5. Find reason to believe Many Individual Conservatives Helping Elect Leaders Everywhere PAC and Barry Arrington in his official capacity as treasurer violated 2 U.S.C. § 434(b)(5).
6. Find no reason to believe Kent Sorenson violated 2 U.S.C. § 434(b)(5).
7. Find reason to believe Many Individual Conservatives Helping Elect Leaders Everywhere PAC and Barry Arrington in his official capacity as treasurer violated 2 U.S.C. § 441a(a)(2)(A) by making excessive in-kind contributions to Bachmann for President.
8. Find reason to believe Bachmann for President and Nancy H. Watkins in her official capacity as treasurer violated 2 U.S.C. § 441a(f) by knowingly accepting excessive in-kind contributions made by MichelePAC.
9. Find no reason to believe Guy Short violated 2 U.S.C. § 441a(f) by knowingly accepting excessive in-kind contributions made by MichelePAC.
10. Find reason to believe Bachmann for President and Nancy H. Watkins in her official capacity as treasurer violated 2 U.S.C. § 434(b)(2)(D) by failing to properly disclose in-kind contributions from MichelePAC.
11. Find no reason to believe that National Fiscal Conservative PAC and Gerald Weygandt in his official capacity as treasurer violated 2 U.S.C. §§ 441a(a) or 441b(a) by making an excessive or prohibited in-kind contribution to Bachmann for President in the form of a coordinated communication.
12. Find no reason to believe Bachmann for President and Nancy H. Watkins in her official capacity as treasurer violated 2 U.S.C. §§ 441a(f) or 441b by receiving an excessive or prohibited in-kind contribution from National Fiscal Conservative PAC in the form of a coordinated communication.


13. Take no action against C&M Strategies, Inc.


14. Approve the attached Factual and Legal Analyses.

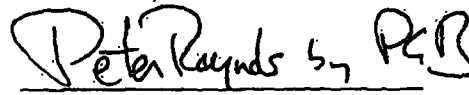
15. Approve the attached Conciliation Agreements.

16. Approve the appropriate letters.

8/26/14
Date


Daniel A. Petalas
Associate General Counsel


Peter Blumberg
Assistant General Counsel


Peter Reynolds
Attorney